

Juvenile Policy Board
Minutes
(Unofficial Until Approved)
September 5, 2014
1:30pm

Members Present:

Judge William Herauf, Chair
Justice Lisa Fair McEvers via telephone
Judge Doug Mattson
Referee John Grinsteiner
Scott Hopwood, Juvenile Court Director, Unit 4

Members Not Present:

Judge Daniel Narum
Judge David Reich
Brad Saville, Juvenile Court Officers Association

Staff Present:

Scott Johnson, Asst. State Court Administrator
Lana Zimmerman, scribe

Guests:

Cory Pedersen, Juvenile Court Director, Unit 3
Karen Kringlie, Juvenile Court Director, Unit 2
Mike Hagburg, Staff Attorney
Catie Palsgraaf, Court Improvement Project Research Analyst
Lee Ann Johnson, Department of Human Services
Lisa Jahner, Juvenile Justice Program Manager, Association of Counties

Judge Herauf called the meeting to order. He asked if there were any additions or corrections to the February 28, 2014, meeting minutes. Ms. Kringlie noted a correction on page 4, paragraph #4, line 7 to read, "Ms. Kringlie shared that 70% of cases are filed in the juvenile office, so probation notes, informal adjustment agreements are maintained there, which is the working file." Mr. Hopwood noted a correction on page 1 under Guests to add, "Shawn Peterson, Juvenile Court Director, Unit 1." Justice McEvers asked to meet at a later date with Ms. Zimmerman to share some grammatical corrections throughout the minutes. The minutes were not approved and will be added to the December meeting agenda, for approval.

Assessment of Disproportionate Minority Contact - Lisa Jahner

Ms. Jahner reviewed the assessment (with copies distributed to all present) and noted that States that are participating in the Federal Juvenile Justice and Delinquency Prevention Act are required to pursue a reduction in Disproportionate Minority Contact with the Juvenile Justice System (this is the fourth core requirement of the Federal Juvenile Justice Act). The fourth requirement associated with Disproportionate Minority Contact requires that the justice system review the

extent that disproportionality exists among minority youth and focus on rates that are higher and plan for intervention, if necessary.

Ms. Jahner highlighted that the Governor's Juvenile Justice Advisory group (a group that is appointed pursuant to the Federal Juvenile Justice Act) oversees compliance and determines the distribution of Juvenile Justice Act funding. Subsequent to the completion of the assessment, the advisory group provided funding to Burleigh and Cass Counties to address recommendations in the report. An additional \$35,000 has been sent to each jurisdiction to cover the time period November 1, 2014 to September 30, 2015.

Policy 400 Series Changes - Mike Hagburg

Mr. Hagburg provided an overview of the process undertaken to convert the Policy 400 series into Rules of Juvenile Procedure.

Rule 2 - Hearing Time

Rule 2 (B) Lines 8-9 to read, "The court must make a finding that alternatives to detention were considered and explain why secure detention was required and alternatives were not appropriate."

After discussion, it was suggested to take out the word "explain" in line 9.

Rule 2 (c) Lines 10-12 to read, "If a case is not disposed of within 60 days and the child remains in detention, an additional detention hearing must be held to determine of the child's continued detention is required under N.D.C.C. § 27-20-14."

This was accomplished to conform the rule to the chart in Policy 409 with disposition times.

Sub-section (3) Lines 17-18 to read, "except in a continued foster care matter under N.D.C.C. § 27-20-30.1, in which a hearing is optional."

A motion was made by Judge Mattson for the approval of Rule 2 as proposed with the deletion of lines 8-9. The motion was seconded by Justice McEvers for discussion.

Judge Mattson proposed deleting lines 8-9 unless there is flexibility on the 24-hour requirement. An added requirement doesn't need to take place on lines 8-9. With the 24-hour requirement, there will need to be a requirement on finding of alternatives that were considered an explanation why secure detention was required and that alternatives were not appropriate. It would be appropriate to have the 24-hour additional flexibility. If lines 8-9 are required, give added time for weekends and holidays.

Judge Herauf pointed out that the 24-hour requirement is covered by lines 26-28.

The motion was withdrawn by Judge Mattson, seconded by Justice McEvers.

A motion was made by Judge Mattson for the approval of Rule 2 as proposed, seconded by Scott Hopwood -- motion carried.

Rule 3 - Contents of Petition

Sub-section (3) Lines 9-11 to read, “that the names and residence addresses of the parents, guardian, or custodian of the child may not be included in the petition in a continued foster care matter under N.D.C.C. § 27-20-30.1;”

The intent is to follow the continued foster care statute not dealing with the parent/guardian named on the petition.

Sub-section (c) Lines 23-25 to read, “Juvenile Court Officer, Juvenile court officers may not act as the petitioner where the child is alleged to be delinquent, unruly, deprived, or where termination of parental rights are involved.”

This pertains to Policy 408, where Juvenile Court Officers cannot act as petitioners. The language in the process of discussing was amended.

A motion was made by Referee Grinsteiner to approve Rule 3 as proposed, seconded by Judge Mattson -- motion carried.

Rule 5 - Summons

The amendments to Rule 5 relate to conforming to the continued foster care statute. The parents are not likely to be involved in a continued foster care matter. However, the child who is 18 (is now an adult) will be involved.

Sub-section (1) Line 4 to read, “Except in a continued foster care matter under N.D.C.C. § 27-20-30.1,

Sub-section (3) Line 13 to read, “Except in a continued foster care matter under N.D.C.C. § 27-20-30.1,”

Sub-section (4) Line 18-19 to read, “In a continued foster care matter under N.D.C.C. § 27-20-30.1, the court may order the child to appear personally.”

Sub-section (d) Line 29-30 to read, “Except in a continued foster care matter under N.D.C.C. § 27-20-30.1,

Sub-section (d) Lines 33-35 to read, “In a continued foster care matter under N.D.C.C. § 27-20-30.1, a child may waive service by written stipulation or by voluntary appearance at the hearing.

A motion was made by Judge Mattson for the approval of Rule 5 as proposed, seconded by Scott Hopwood – motion carried.

Rule 10 - Presence, Default

The child has the right to be present at continued foster care hearings and the parents aren't compelled to be present at continued foster care hearings. The major change is to have the judge or referee conduct a hearing conference, other proceeding, or to take testimony by using contemporaneous transmission by reliable electronic means.

Sub-section (1) - Line 5 to read, "and continued foster care"

Sub-section (3) Lines 12-13 to read, "Except in a continued foster care matter under N.D.C.C. § 27-20-30.1

Sub-section (d) Lines 25-27 to read, "Presence by Electronic Means. In an action involving a represented child, a judge or referee may conduct a hearing, conference, or other proceeding, or take testimony, by using contemporaneous transmission by reliable electronic means."

A motion was made by Referee Grinsteiner for the approval of Rule 10 as proposed, seconded by Judge Mattson, motion carried.

Rule 17 - Juvenile Court Lay Guardian ad Litem

The amended language in this Rule clarifies what sort of crime the rule is relating to when it talks about the qualifications for a lay guardian ad litem.

Sub-section (5) Line 5 to read, "Have no felony or Class A misdemeanor"

When the background checks are returned on the prospective lay guardians ad litem, they are mailed to Youthworks. Last winter, a background check arrived on an individual that was convicted of Driving Under the Influence in Minnesota at the age of 19. Otherwise, the individual has a clear criminal conviction record.

A motion was made by Scott Hopwood for the approval of Rule 17 as proposed, seconded by Judge Mattson on terms for discussion.

A question arose as to effect of sub-section 5. It reads: "Have no felony or Class A misdemeanor conviction or substantiated instance of child abuse or neglect." After discussion, it was suggested to take out the words, "or Class A misdemeanor" in line 17.

A motion was made by Justice McEvers to delete the reference to Class A misdemeanor in line 17 which would now read: "Have no felony conviction or substantiated instance of child abuse or neglect," seconded by Judge Mattson – motion carried.

Judge Herauf suggested to Mr. Johnson, to discuss the wording in line 17 with the Juvenile Court Directors and add it to the next Juvenile Policy Board agenda, for discussion.

Rule 18 - Disposition: Conditions

This Rule is more extensive because it's a completely new Rule. The first paragraph is from the statute. Sub-divisions B and C are from the procedural areas of Policy 404 which focus on restitution and community service. Sub-division D is from Policy 401 on screening and testing juveniles for drug and alcohol use. Sub-division E is from Policy 407 on electronic monitoring.

After discussion and by consensus, it was determined to add "or unruly" after the word "delinquent" in line 3; take out the statutory reference and add "law" in line 4; add "if any" after the word "owed" in line 8; add "if any" after the word "amount" in line 13; add "if any" after the word "determine" in line 28; add "if any" after the word "set" in line 31.

Further, it was determined that a new sub-division (F) relating to Juvenile Drug Court will be created to read: "If a juvenile is ordered to participate in the Juvenile Drug Court Program under N.D.C.C. § 27-20-31(7), Juvenile Drug Court has the authority to conduct drug and alcohol testing and utilize other house arrest." This is in reference to Administrative Rule 56, which governs the treatment of a child.

A motion was made by Judge Mattson for the approval of Rule 18 as proposed, seconded by Scott Hopwood -- motion carried.

Rule 19 - Juvenile Records

This is a new Rule and incorporates sub-divisions A, B, and C, which are from Policy 402 on Juvenile Court Records. Sub-division D is from Policy 403 on expungement. The two policies were made into a Juvenile Rule.

After a discussion on Rule 19, Juvenile Records – a motion was made by Referee Grinsteiner for the approval of Rule 19 as proposed, seconded by Judge Mattson – motion carried.

Policy 401 - Juvenile Court Procedure: Authority: Policy

Mr. Hagburg noted that there were policy related items left to consolidate after removing applicable procedural areas. He reviewed a revised Policy 401 and explained the following adjustments:

On Page 1, Section III - Juvenile Court Records talks about what Century Code section gives the state court system the authority to keep juvenile court records, and which Rules apply to the management of the Juvenile Court Records.

On Page 2, Section IV - Restitution and Community Service. This section discusses what the internal procedure is for the payment of the restitution.

On Page 3, Section V - Detention Hearings and Alternatives to Detention listed the Policy behind detention hearings, but also refers to the detention hearing policy, which will be implemented.

On Page 4, Section VI - Juvenile Court Officer was added and references the statute that gives authority for the duties of juvenile court personnel. This explains the qualifications of a Director of Juvenile Court for purposes of the statute and section specifics. This is an effort to provide the basis of legal authority.

After discussion and by consensus it was determined on page 4, Section V, paragraph 1, last sentence to read, "House arrest and electronic monitoring are alternatives to detention."

A motion was made by Justice McEvers under Section IV (A) to remove "are" and add "may be" in the second sentence which will now read: "community services programs may be effective in reducing recidivism rates of juvenile offenders," seconded by Judge Mattson-- motion carried.

Subsequent to discussion (and by consensus) it was determined that on page 1, Section II (A) to add periods after N.D.C.C. to ensure consistent application of standards relating to North Dakota Century Code abbreviations.

A motion was made by Referee Grinsteiner for the approval of Policy 401 as proposed, seconded by Scott Hopwood -- motion carried.

CIP Update

Ms. Palsgraaf highlighted aspects of the August Federal foster care IV-E eligibility review. The reviewers focused on 80 cases. The reviewers focused on Temporary Court Orders (TCO) signed by Directors of Juvenile Court (and Juvenile Court Officers) and asked what the authority basis was and implications associated with a TCO. Essentially, the reviewers asked: "is the TCO the court order which triggers Federal requirements associated with IV-E funding. Additionally, she noted that there is specific language that is required to be placed into first court order removing a child from the home. If the language is there and appropriate findings are made counties will be reimbursed for foster care. In the field, Child Protection workers consider the TCO a court order.

Ms. Lee Ann Johnson, Department of Human Services, clarified that, if the TCO is a judicial determination and does not contain required language, should this order carry the weight of a judicial determination?

Ms. Palsgraaf noted that there are three options for removal authority when looking at the statute: 1) a court order, 2) law enforcement removal, 3) Director of Juvenile Court Services, or Juvenile Court Supervisor, order.

Ms. Kringlie noted that the TCO is essentially treated as a removal authorization for shelter care

hearing. Judicial oversight occurs at the shelter care hearing. Additionally, if a law enforcement officer makes the removal (and appears at the PC hearing), the removal authority is reviewed at the shelter care hearing. Overall, does the TCO have the same weight (authority) as a court order? This is the crux of the issue that led to questions being raised by Federal reviewers.

The position of the Juvenile Policy Board (JPB) is that if a determination on the question is required for the IV-E review -- that question should be directed to counsel for the Department of Human Services. This is not a determination that can be made by the Juvenile Policy Board.

ND Juvenile Court Services - Strategic Plan Update

Refer to the Juvenile Court Services Strategic Plan handout. Mr. Hopwood shared the five year strategic plan was due for updating. Mr. Johnson and the Directors of Juvenile Court made updates to align the budget process with the strategic plan for Juvenile Court Services.

It was suggested to make any further updates and add to the next Board meeting agenda.

Other Business

Refer to the ND Juvenile Court Mission Statement handout. Ms. Kringlie noted that the Best Practices Workgroup reviewed the mission statement at its most recent meeting. She highlighted the fact that the original mission statement was adopted in 1999.

The Best Practices sub-committee noted that the current mission statement does not reflect the work of the Juvenile Courts System on deprived cases. A proposal was made by the sub-committee to add the following to the mission statement: "The Juvenile Court also protects the best interests of children and addresses the unique characteristics and needs of children that come before the Court in child deprivation matters."

The sub-committee determined the added language should be brought to the Juvenile Policy Board for consideration. It was noted that the mission statement isn't housed in rule or statute and it resides in the Best Practices manual. Therefore, it was suggested by this Board to have the Juvenile Court Directors work on the revised mission statement and let the Board know of the final result.

A motion was made by Judge Mattson to adjourn the meeting, seconded by Referee Grinsteiner— motion approved.